

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS BUTTARO,

Plaintiff,

MEMORANDUM AND ORDER
15 CV 5703 (ILG)

-against-

CITY OF NEW YORK, et al.,

Defendants.
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GLASSER, United States District Judge:

On October 1, 2015, the plaintiff filed this action pursuant to 42 U.S.C. §§ 1981, 1983, 1985 and The New York City Human Rights Law against the City of New York and the members of the New York City Fire Department alleging First Amendment retaliation, selective treatment, discrimination, conspiracy and municipal liability, DE 1. The defendants moved to dismiss the complaint pursuant to Rule 12(b)(1) and 12(b)(6) DE 12, 13, 14. In a Memorandum and Order dated September 15, 2016, familiarity with which will be assumed, the Motion was granted in part and denied in part. Surviving dismissal were his retaliation claims based on a statement made during a fairness hearing and municipal liability, DE 25. The plaintiff's request for leave to file an amended complaint was granted as to the equal protection claim only and, in all other respects, was denied. The amended complaint, if any, was directed to be filed within 15 days of the date of the Order. The history of this action as it has subsequently unfolded is as follows:

On September 23rd, approximately one week after the complaint was filed, plaintiff's

counsel sought permission of the Court to withdraw and requested that further proceedings be stayed pending new counsel to be obtained by plaintiff or his continued appearance pro se, DE 26. In light of the foregoing, the defendants requested a stay of its time to move for reconsideration of the Court's order until 3 weeks after plaintiff reports that he will seek to amend his complaint, DE 27.

In an Order dated September 28, 2016, conditioned upon the absence of plaintiff's response to counsel's request, permission to withdraw as counsel was granted. The Order advised the plaintiff that a notice of appearance by new counsel shall be filed on or before November 15, 2016, failing which he will be deemed to be proceeding, thereafter, pro se. The Order also provided that the plaintiff's request to file an amended complaint on or before September 30th was granted and unless the Court was advised that an amended complaint was no longer contemplated, one was to be filed 3 weeks after new counsel appears. The defendant's request for a stay to move for reconsideration of the Court's Order was granted to be filed on or before 3 weeks after an amended complaint was filed or after the Court was advised that one was no longer planned, DE 28.

In a letter dated November 14, 2016, one day before an appearance by new counsel was to be filed, the plaintiff requested an extension of time to retain new counsel and stated that he did not oppose his counsel's request to withdraw, DE 29. In an Order dated November 16, 2016 counsel's request to withdraw was affirmed and plaintiff's request to obtain new counsel was extended to December 29, 2016, DE 32.

In a letter dated December 28, 2016 the plaintiff makes another request for an extension of time to retain new counsel, DE 33.

In each of his requests he writes that he has “repeatedly been told time and again, that either prospective counsel does not want to get involved in a case that is already in litigation or that a union is involved in. Plaintiff feels that proceeding pro se would be detrimental to his case.”

In light of the foregoing, his request for a further extension is denied and he is now deemed to proceed pro se. As described above, he may file an amended complaint as to the equal protection claim only on or before February 2, 2017. The defendants’s motion for a reconsideration of the Court’s Order of September 15, 2016, DE 25 shall be filed on or before February 23, 2017.

SO ORDERED.

Dated: Brooklyn, New York
January 12, 2017

/s/

I. Leo Glasser, U.S. District Judge

cc: Thomas A. Buttarro
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